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Roots Ready Made Garments Co. W.L.L.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

ROOTS READY MADE GARMENTS CO.
W.L.L.,

Plaintiff,

v.

THE GAP, INC., a/k/a, GAP, INC., GAP
INTERNATIONAL SALES, INC., BANANA
REPUBLIC, LLC, AND OLD NAVY, LLC,

Defendants.

Case No: C 07 3363 CRB

**DECLARATION OF ROBERT P. HANEY
IN SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANTS'
MOTION FOR A PROTECTIVE ORDER**

Date: October 19, 2007
Time: 10:00 a.m.
Place: Dept. 8
Judge: Hon. Charles R. Breyer

Robert P. Haney declares the following under penalty of perjury:

1. I am an attorney admitted to appear before this Court *pro hac vice* in this matter ("Roots Action"), and am counsel to Plaintiff Roots Ready Made Garments Co. W.L.L. ("Roots").

2. I make this Declaration in support of Plaintiff's Opposition to Defendants' Motion for a Protective Order (Docket No. 48).

3. In its motion for a protective order Gap fails to disclose that the parties have already satisfied the obligation, under Fed. R. Civ. P. 26(f), to confer regarding discovery. In fact, discovery has been ongoing in this action for more than a month.

1 4. On July 31, 2007, counsel for Gap sent a letter to Roots' counsel requesting that
2 Roots' propose a schedule for discovery. A true and correct copy of that letter is attached hereto
3 as Exhibit 1.

4 5. Roots' counsel responded by offering a proposed discovery schedule in a letter
5 dated August 8, 2007, a true and correct copy of which is attached hereto as Exhibit 2.
6 Although Roots specifically invited Gap's counsel to offer its comments on the proposed
7 schedule, Gap's counsel never responded with a counterproposal.

8 6. Pursuant to its proposed schedule, Roots served Gap with its initial disclosures
9 on August 17, 2007. A true and correct copy of Roots' initial disclosures is attached hereto as
10 Exhibit 3.

11 7. To date, Roots and Gap have produced approximately 45,000 pages of
12 documents. On August 3, 2007, Roots made an initial production of approximately 8,700 pages
13 of documents to Gap. On August 7, 2007, Gap produced to Roots approximately 36,000 pages
14 of documents that it had previously produced in a closely-related litigation pending before this
15 Court, *Gabana Gulf Distribution Ltd., et al. v. Gap, Inc. et al.*, Case No. C 06 2584 CRB
16 ("Gabana Action").

17 8. Roots has participated in the depositions of two Gap witnesses that were held in
18 August in the Gabana Action. First, pursuant to the Court's order, Roots attended the deposition
19 of Jim Bell on August 10. Second, with Gap's consent, Roots participated in the deposition of
20 Julie Kanberg on August 17.

21 9. Gap, too, has sought affirmative discovery in this case. On August 23, 2007,
22 Gap served an initial set of discovery requests on Roots, including document requests,
23 interrogatories, and requests for admissions. These requests were never withdrawn and remain
24 pending. True and correct copies of Gap's discovery requests are attached hereto as Exhibits 4,
25 5 A, 5 B, and 6.

1 10. On August 24, 2007, Judge Breyer denied Roots' motion to consolidate the
2 Roots Action and the Gabana Action for purposes of discovery. In so ruling, the Court declined
3 to order Roots' participation in the depositions of Gabana's witnesses that were scheduled to
4 occur in the Gabana Action during the week of September 10 in Paris. The Court's order did
5 not preclude Roots from noticing the depositions of Gabana witnesses, during the week of
6 September 10, with the cooperation of those witnesses.

7 11. Gap is scheduled to take the depositions of Gabana witnesses in the Gabana
8 Action during the week of September 10 in Paris, France.

9 12. Over the Labor Day weekend, Roots negotiated an agreement with Gabana
10 pursuant to which Roots would produce its former CEO, Ashraf Abu Issa, on September 10 in
11 Paris for a deposition in the Gabana Action. In return, Gabana agreed to make one of its
12 witnesses, Amin El Sokary, available for a deposition in the Roots Action on September 12 —
13 the same date that Gap was scheduled to depose Mr. El Sokary.

14 13. On September 4, 2007, Gabana's counsel informed Gap's counsel of this
15 arrangement. Attached hereto as Exhibit 7 is true and correct copy of an email, dated
16 September 4, 2007, from Gabana's counsel conveying this information to Gap's counsel.

17 14. The next day, by reply email, Gap's counsel objected to Roots taking Mr. El
18 Sokary's deposition, purportedly based on the Court's order denying consolidation. A true and
19 correct copy of the email is attached hereto as Exhibit 8.

20 15. On September 5, 2007, my colleague, Bradley J. Nash, responded by email to
21 Gap's counsel's objection, explaining that the Court made no ruling precluding Roots from
22 noticing a third-party deposition of a Gabana witness now that discovery had commenced. A
23 true and correct copy of this email is attached hereto as Exhibit 9.

24 16. Mr. Nash attached to his September 5 email a formal notice of Mr. El Sokary's
25 deposition. A true and correct copy of the deposition notice is attached hereto as Exhibit 10. A
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1 hard copy of the notice was also served on Gap's counsel by hand delivery on September 10,
2 2007.

3 17. On September 6, Gabana's counsel sent an email acknowledging receipt of the
4 deposition notice, but asserting that the notice was premature because the parties had not yet
5 "conferred [concerning discovery] as required by Rule 26(f)." A true and correct copy of this
6 email is attached hereto as Exhibit 11.

7 18. By reply email sent on September 6, Mr. Nash explained that Roots had already
8 discharged its obligation to "meet and confer" regarding discovery when it sent Gap the
9 proposed discovery schedule on August 8, and that Gap acknowledged as much when it served
10 discovery requests on Roots. A true and correct copy of this email is attached hereto as Exhibit
11 12.

12 I declare under penalty of perjury under the law of the United States that the
13 foregoing is true and correct.

14 Executed this 10th day of September 2007 in Paris, France.

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16
17 /s/ Robert P. Haney

18 Robert P. Haney
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